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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/526,525	08/26/2005	Cedric Szpirer	VANM261.001APC	5339
29995 7590 03/02/2011 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER VOGEL, NANCY TREPTOW				
ART UNIT		PAPER NUMBER		
1636				
NOTIFICATION DATE		DELIVERY MODE		
03/02/2011		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/526,525

Applicant(s)

SZPIRER ET AL.

Examiner

NANCY VOGEL

Art Unit

1636

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5, 8-26, 28, 30-34 and 36-39 is/are pending in the application.
- 4a) Of the above claim(s) 13-21, 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 5, 8-12, 22-25, 28 is/are rejected.
- 7) ☒ Claim(s) 3, 30-34 and 36-39 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims 1-5, 8-26, 28, 30-34, 36-39 are pending in the case.

Claims 13-21, 26 are withdrawn.

Claims 1-5, 8-12, 22-25, 28, 30-34, 36-39 are under examination.

Any rejection of record in the previous action not addressed in this office action is withdrawn.

Response to Amendment

The Declaration under 37 CFR 1.132 filed 12/13/10 is sufficient to overcome the rejection of claims 1, 5, 8-12, 23-25, 27, 36-40 based upon Gabant et al. (WO 02 0266657).

The following are new rejections:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 5, 8-12, 22, 23, 25, 28, are rejected under 35

U.S.C. 102(b) as being anticipated by Gabant et al. (WO 01/46444) (cited previously by applicants).

Gabant et al. disclose a recombinant genetic construct comprising a promoter/activator sequence disposed upstream of a first nucleotide sequence (ccdB) encoding a first poison protein and disposed upstream of a second nucleotide sequence encoding a second poison protein different from said first poison protein (Kid) (see Fig. 2, 3, [0010] [0023],). Other poison proteins are disclosed ([0024, 0025]). The reference discloses that the nucleotide sequences encoding poison proteins may encode a fusion protein active as a poison protein which encodes said fusion protein comprising several unique cloning sites and a sequence encoding a poison protein ([0028]. The reference discloses that the genetic construct may further comprise recombination sites upstream and downstream from the sequences encoding the first and the second poison proteins ([0017]). The reference discloses that the construct comprises an origin of replication and an antibiotic selectable marker (Fig. 2). The reference discloses prokaryotic cells transformed with the construct ([0030]). The reference discloses that animal or yeast cells may be used as host cell ([0036-0037]). The cells may express antidotes to the poison proteins (Fig. 2).

Claims 1, 2, 4, 8-11, 12, 23, 28, are rejected under 35 U.S.C. 102(b) as being anticipated by Barnard et al. (US Patent 5,910,438)(cited previously by applicants).

Barnard et al. disclose a recombinant genetic construct comprising a promoter/activator sequence disposed upstream of at least one nucleotide sequence encoding a fusion protein which is active as a poison, said nucleotide sequence being obtained by fusing a coding sequence which includes several

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unique cloning sites and a sequence which encodes a protein poison (col. 3, lines 33-40, claims). The poison proteins maybe CcdB, Kid, Doc et al. (col. 5 lines 18-24). The genetic construct may comprise an origin of replication and an antibiotic selective marker (Fig. 1). Prokaryotic cells transformed with the construct are disclosed (see claims).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over by Gabant et al. (WO 01/46444) (cited previously by applicants).

Gabant et al. is cited essentially for the reasons set forth above. The difference between the reference and the instant claims is that the cell transformed by the genetic construct of claim 1 is a human cell. However, the reference discloses that "animal" cells may be used as the host cell into which the construct is transformed, but does specify human cells ([0036] [0037]). However, it would have been obvious to one of ordinary skill in the art to have used human cells, since such cells were one well known type of animal cell available in culture, and one would have been motivated to use a human cell as a host by the desire to utilize a cell which is well studied and which has

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significance for such well known uses as studying human cell function, and for studies of therapies useful for humans.

Allowable Subject Matter

Claims 3, 30-34, 36-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NANCY VOGEL whose telephone number is (571)272-0780. The examiner can normally be reached on 7:00 - 3:30, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joanne Hama can be reached on (571) 272-2911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NANCY VOGEL/
Primary Examiner, Art Unit 1636

NV
2/25/11